No. 86-1601

Supreme Court, U.S.
FILED
JUN 4 1987
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

RAMON AZURIN AND GREGORIO ARANETA, PETITIONERS

v.

WILLIAM VON RABB, COMMISSIONER OF CUSTOMS
OF THE UNITED STATES CUSTOMS SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Adickes v. *S.H. Kress & Co.*, 398 U.S. 144 (1970) 8
Decatur v. *Paulding*, 39 U.S. (14 Pet.) 497 (1840) 4, 5
Delta Air Lines, Inc. v. *August*, 450 U.S. 346 (1981) 8
Field v. *Clark*, 143 U.S. 649 (1892) 5
Fonseca v. *Regan*, 734 F.2d 944 (2d Cir.), cert. denied, 469 U.S. 882 (1984) 4, 7
Kerr v. *United States District Court*, 426 U.S. 394 (1976) 4
Lukhard v. *Reed*, No. 85-1358 (Apr. 22, 1987) 5
NLRB v. *Bell Aerospace Co.*, 416 U.S. 267 (1974) 5
Panama Canal Co. v. *Grace Line, Inc.*, 356 U.S. 309 (1958) 4, 5
Southern Ry. v. *Seaboard Allied Milling Corp.*, 442 U.S. 444 (1979) 6
United States v. *Fawcett*, 86 F. 900 (S.D.N.Y. 1897) 6
United States v. *One Bag of Crushed Wheat*, 166 F. 562 (S.D.N.Y. 1908) 6
Warth v. *Seldin*, 422 U.S. 490 (1975) 8

Constitution, statutes and regulations:

U.S. Const.:
Amend. IV 8
Amend. V 8

Tariff Act of 1930, 19 U.S.C. (& Supp. III) 1401 *et seq.* .. 1
19 U.S.C. 1484(a)(2)(C) 5, 6, 8
19 U.S.C. 1485(a)(3) 6
19 U.S.C. 1490(a) 5

18 U.S.C. 542 6

18 U.S.C. 545 6

18 U.S.C. 1001 6

19 C.F.R.:
Section 141.0a(a) 6
Section 141.12 6

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1601

RAMON AZURIN AND GREGORIO ARANETA, PETITIONERS

v.

WILLIAM VON RABB, COMMISSIONER OF CUSTOMS OF THE UNITED STATES CUSTOMS SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners contend that the court of appeals erred in holding that the Customs Service had statutory authority to detain property brought into the United States by former Philippine President Ferdinand Marcos when conflicting claims to the property had been made by the current Philippine government.

1. a. On February 26, 1986, petitioners arrived at Hickam Air Force Base in Hawaii as part of a group of ninety individuals traveling with Ferdinand E. Marcos, former President of the Republic of the Philippines. All members of the group arrived on a single plane with certain items of property. A second plane brought additional items, consisting of large amounts of Philippine currency, non-cash monetary instruments, jewelry, statuary, clothing, documents, and miscellaneous personal effects. Pet. App. 2a. Following the procedures set forth by the Tariff Act of 1930 (19 U.S.C. (& Supp. III) 1401 *et seq.*), the United States Customs Service took custody of the cargo on the second plane for entry processing.

Immediately after the Customs Service took possession of the property, claims of ownership were asserted on behalf of the Philippine government. On March 1, 1986, three days after Marcos arrived in Hawaii, Philippine President Corazon Aquino sent a letter to the United States Ambassador in Manila formally asserting a claim to the property on behalf of the Philippine Government, and requesting that the United States take custody of the property. See Pet. App. 2a; E.R. 53-55.[1] Several days later, in a letter to the Customs Service, the Philippine Government, through counsel, reiterated its claims to all property on board the aircraft (*id.* at 55).[2] On March 7, 1986, and March 10, 1986, petitioners, as agents for Marcos, filed customs forms seeking the release of the property to Marcos. While these forms identified petitioners as the importers (see E.R. 66-70), they also stated that "[r]eceipt of [the monetary] instruments and documents * * * is not an admission of ownership" (*id.* at 70).

The Customs Service refused to release the property to petitioners. The Customs Service based its decision on, among other things, the fact that a conflicting claim to the property had been made by the Philippine Government. See E.R. 63-64. To resolve this ownership dispute, the Commissioner of Customs, through the United States, sought to place the detained property in interpleader.

b. After the Customs Service refused to release the property, petitioners filed the instant action in the United States District Court for the District of Hawaii. Petitioners sought a writ of mandamus to compel the Commis-

---

[1] Citations to "E.R." are to the excerpts of record filed in the court of appeals.

[2] Additionally, the Philippine Government initiated various legal actions seeking return of the property. See *Republic of the Philippines* v. *Marcos*, No. 86-0155 (D. Haw.); *Republic of the Philippines* v. *Marcos*, No. 86-0213 (D. Haw.); *Republic of the Philippines* v. *Marcos*, No. 86-3859 (C.D. Cal.).

sioner of Customs to return the detained property to Marcos. Petitioners alleged that they had properly executed all of the required customs forms and that the Customs Service had no statutory authority to detain the property. See E.R. 3. Additionally, petitioners as agents for Marcos asserted that detention of the property violated Marcos' constitutional rights. *Ibid.*[3]

The district court ruled for petitioners (Pet. App. 14a-35a). The court held (*id.* at 24a-31a) that the Customs Service could not rely upon the conflicting claims of ownership to detain the property. The court reasoned that under the Tariff Act the question of ownership is irrelevant to whether property should be released. The district court issued a writ of mandamus ordering release of the property to Marcos (*id.* at 12a-13a).[4]

The court of appeals reversed (Pet. App. 1a-11a). Noting that this is an action for a writ of mandamus, the court concluded that "[t]he critical issue" is whether the Customs Service has a "ministerial duty to release the

---

[3] After the initiation of petitioners' action seeking the return of the detained property to Marcos, the Philippine Government presented to the United States Embassy in Manila another formal claim of ownership of the property. The claim was presented in a letter addressed to the United States Ambassador from Senator Jovito R. Salonga, Chairman of the Philippine Presidential Commission on Good Government. See E.R. 56. Additionally, the Philippine Government, through Senator Salonga, repeated the request made by President Aquino that the United States not release the property to Marcos until a determination of ownership could be made (*ibid.*). In response our Government gave assurances to the Philippine Government that the property "would be detained until it could be placed in an interpleader proceeding" (E.R. 45). The assurances given by our Government reflected "the high priority the United States Goverment places on fulfilling its commitments to the new Philippine Government" (*id.* at 44).

[4] The court of appeals granted the Commissioner's emergency motion for a stay pending appeal. Pet. App. 48a-49a.

goods so plainly prescribed as to be free from doubt" (*id.* at 3a). After reviewing the language of the statute and the Customs Service's regulations, the court concluded that there was no clear duty to release goods under these circumstances (*id.* at 4a-7a). The court further concluded that the statutory language made legal ownership relevant, thus refuting petitioners' claim that the Customs Service could not consider ownership before releasing goods (*id.* at 4a-5a). In distinguishing the Second Circuit's decision in *Fonseca* v. *Regan*, 734 F.2d 944, cert. denied, 469 U.S. 882 (1984), the court noted that *Fonseca* was decided on the basis of common law principles governing the return of checked baggage, and unlike this case did not involve the application of the Customs Service's statutes and regulations. Pet. App. 9a. The court also distinguished *Fonseca* on the basis that the conflicting claims of ownership in *Fonseca* "were not 'colorable' or were 'suspect' " (*id.* at 10a). In contrast, the court observed that there was no indication that the claims made by the Philippine Government are not colorable (*ibid.*).

2. The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore unwarranted.

a. This case is controlled by long established principles governing when a writ of mandamus may issue. It is settled that mandamus is an "extraordinary remedy" (*Kerr* v. *United States District Court*, 426 U.S. 394, 402 (1976)), and is appropriate only when the statute commands the performance of a "mere ministerial act" (*Decatur* v. *Paulding*, 39 U.S. (14 Pet.) 497, 516 (1840)). See *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309, 318 (1958). The court of appeals correctly applied that rule to reject petitioners' claims.

The Tariff Act charges the Customs Service with administering the laws governing the import of goods from

foreign countries. The court has long recognized that "in the judgment of the legislative branch of the government, it is often desirable * * * to invest the [Executive Branch] with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations." *Field* v. *Clark*, 143 U.S. 649, 691 (1892). The Tariff Act confers discretion on the Customs Service to detain property when there appears reason to do so: Section 1490(a) allows the Customs Service to detain property "for want of proper documents *or other cause*." 19 U.S.C. 1490(a) (emphasis added). The statute in no way limits the factors that the Customs Service may consider before releasing property. This feature of the Tariff Act is dispositive: "[W]here the duty to act turns on matters of doubtful or highly debatable inference from large or loose statutory terms, the very construction of the statute is a distinct and profound exercise of discretion" (*Panama Canal Co.*, 356 U.S. at 318), and "can, with no propriety, be said to command a mere ministerial act" (*Decatur*, 39 U.S. (14 Pet.) at 516).

Petitioners' entire argument turns on their claim (Pet. 7-8) that, under the Tariff Act, ownership is irrelevant to a decision to release property. But nowhere in the statute is there any suggestion that the Customs Service has a non-discretionary obligation to release property to its possessor in the face of a colorable conflicting claim of ownership. To the contrary, the statute specifically allows entry by the "owner or purchaser" not the "possessor." See 19 U.S.C. 1484(a)(2)(C). Had Congress wanted to require release to the "possessor" it could have easily said so. See *Lukhard* v. *Reed*, No. 85-1358 (Apr. 22, 1987), slip op. 6-7 (plurality opinion); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 285 n.13 (1974). The Customs Service's entry forms (including those used in this case) ask whether the person making entry is the owner. See E.R. 66. The declaration of owner-

ship is made under oath and must be true and correct. See 19 U.S.C. 1485(a)(3). Failure to answer the question truthfully is a criminal offense and can lead to forfeiture. See 18 U.S.C. 542, 545, 1001; *United States* v. *One Bag of Crushed Wheat*, 166 F. 562, 565 (S.D.N.Y. 1908); *United States* v. *Fawcett*, 86 F. 900, 902 (S.D.N.Y. 1897). It would make no sense to require truthful information on ownership—under penalty of law for false information—if, as petitioners suggest, ownership were irrelevant under the statutory scheme.

Other language of the statute also undercuts petitioners' contention that the Customs Service was required to accept their declaration, even though a competing claim of ownership had been made by the Philippine Government. Section 1484(a)(2)(C) provides that when a consignee of property attempts to make entry and declares that he or she is the owner, the customs officer "*may*, without liability, accept the declaration [of ownership]." 19 U.S.C. 1484(a)(2)(C) (emphasis added). The use of the permissive "may" indicates that the Customs Service is not obliged to accept a declaration of ownership. See *Southern Ry.* v. *Seaboard Allied Milling Corp.*, 442 U.S. 444, 455 (1979).[5]

---

[5] Petitioners misread (Pet. 8) 19 C.F.R. 141.12 to require release of the property to the person who has possession. As the court of appeals explained (Pet. App. 6a-7a), Section 141.12 merely allows the possessor of the property to "make entry"—*i.e.* to file for release of the property. See 19 C.F.R. 141.0a(a). It does not direct release of the property to the possessor.

Petitioners assert (Pet. 12) that before the district court the Customs Service conceded that it had a duty to release this property. To the contrary, throughout this litigation the Customs Service has strenuously argued that it has the authority to detain property pending a determination of ownership. Petitioners' selective quotation (*ibid.*) from the Customs Service's filing in the district court provides no support for their assertion. The Customs Service's opposition to petitioners' request for a preliminary injunction clearly stated that "if Customs has reason to doubt the correctness of such a declaration [of

b. Petitioner contends (Pet. 7-10) that the decision below conflicts with the Second Circuit's decision in *Fonseca* v. *Regan*, 734 F.2d 944, cert. denied, 469 U.S. 882 (1984), but the court of appeals correctly distinguished that case. See Pet. App. 9a-10a. In *Fonseca* a suitcase containing $250,000 in cash was misdirected to New York City from its original destination in Lima, Peru. After the United States, the State of New York, and the Colombian Government claimed the suitcase, the Customs Service refused to release it to Fonseca. The Second Circuit held that the Customs Service could not detain the property.

The result in *Fonseca* turned on the common law principle that "the holder of a baggage claim check is ordinarily entitled to the return of the checked baggage." 734 F.2d at 949. Moreover, in *Fonseca* the person demanding release of the property from the Customs Service did not seek to bring the suitcase into this country. *Id.* at 946, 950. By contrast, petitioners clearly seek to bring this property into the country.[6] Finally, in *Fonseca* the court relied on the fact that the conflicting claims of ownership asserted by the United States, the State of New York, and the Colombian Government, were not "colorable" and indeed were "suspect." *Id.* at 950. Here, as the court of appeals concluded, "[t]here is no indication in the record that the claim of the Republic of the Philippines is not colorable." Pet. App. 10a.

---

ownership], it has the discretion, and indeed the obligation, to take steps to determine the identity of the true owner." Defendant's Opposition to Plaintiffs' Motion for a Preliminary Injunction 18.

[6] Petitioners argue (Pet. 9) that Marcos was forcibly brought into the United States and, like the plaintiff in *Fonseca*, never intended to bring the property to this country. Whatever the merits of petitioners' claim as to how they and Marcos arrived in Hawaii, the fact of the matter is that they are now here and they seek to bring this property into this country. In doing so, they subject themselves to the relevant customs laws.

c. Finally, petitioners grossly overstate the significance of the ruling below in suggesting that it allows the Customs Service the "unfettered discretion" (Pet. 6) to detain property indefinitely. The court of appeals took pains to "emphasize the narrowness of [its] holding" (Pet. App. 11a), and the decision is necessarily based on the highly unusual facts of this case, involving conflicting claims made by a foreign government and a former head of state of that government, and efforts by our government to fulfill commitments made to the newly-formed Philippine government. See E.R. 44-45. The fact that the Customs Service has sufficient discretion to detain property in these circumstances does not mean that it has any plan to do so whenever an ownership dispute arises. And the Customs Service certainly has no interest in detaining property arbitrarily. Indeed, the statutory scheme permits the Customs Service to release property without conducting an investigation into ownership. See 19 U.S.C. 1484(a)(2)(C). The paucity of cases involving the detention of property by the Customs Service plainly suggests that petitioners' fears are not well founded and that the question presented will not be a recurring one.[7]

---

[7] Petitioners also complain (Pet. 12, 13) that the Customs Service's detention of the property violates the Fourth and Fifth Amendments to the Constitution. These arguments were neither pressed before nor decided by the court of appeals. Therefore, they are not properly before this Court. See *Delta Air Lines, Inc.* v. *August*, 450 U.S. 346, 362 (1981); *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970). In any event, Marcos is not a party to this case, and petitioners have no standing as third parties to raise constitutional claims on his behalf. See *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975).

Petitioners also argue (Pet. 12) that their only remedy to obtain this property is mandamus. That is incorrect. The Customs Service has no interest in retaining this property indefinitely, and petitioners can establish their rights to the property in the district court interpleader action. Although the district court dismissed that action without

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

JUNE 1987

---

prejudice in part to avoid rendering this case moot (Pet. App. 46a), the court also "recognize[d] * * * that circumstances may change" (*id.* at 47a) if the court of appeals should vacate the district court's writ of mandamus. In light of the court of appeals' decision, the government intends to ask the district court to reinstate the interpleader action if necessary to resolve this matter.

U.S. GOVERNMENT PRINTING OFFICE: 1987—181-483/40375